

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to certificates of nonviable birth  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 95, “Vital Records: General Administration,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 144.3 and section 144.31B as enacted by 2022 Iowa Acts, Senate File 577.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 144.31B as enacted by 2022 Iowa Acts, Senate File 577.

*Purpose and Summary*

These proposed amendments implement 2022 Iowa Acts, Senate File 577, by establishing a process to request and issue a certificate of nonviable birth when a health care provider diagnoses a nonviable birth.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa. A fiscal impact of less than \$100,000 annually or \$500,000 over five years is anticipated. The Department anticipates hiring one clerk specialist, and a fee for issuance of a certificate of nonviable birth will be established.

*Jobs Impact*

The Department anticipates hiring one clerk specialist for the issuance of certificates of nonviable birth.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 6, 2022. Comments should be directed to:

Melissa Bird  
Department of Health and Human Services  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [melissa.bird@idph.iowa.gov](mailto:melissa.bird@idph.iowa.gov)

### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new paragraph **95.6(1)“h”**:

*h.* The state registrar shall charge a fee of \$15 for the purpose of issuing a certificate of nonviable birth pursuant to Iowa Code section 144.31B.

ITEM 2. Renumber rules **641—95.15(144)** to **641—95.17(144)** as **641—95.16(144)** to **641—95.18(144)**.

ITEM 3. Adopt the following new rule 641—95.15(144):

#### **641—95.15(144) Certificate of nonviable birth.**

**95.15(1)** As used in this section:

- a.* “*Certificate of nonviable birth*” means a document issued based upon a nonviable birth.
- b.* “*Health care provider*” means the same as defined in Iowa Code section 144.29A.
- c.* “*Hospital*” means the same as defined in Iowa Code section 135B.1.
- d.* “*Nonviable birth*” means an unintentional, spontaneous fetal demise occurring after demonstration of a doppler-detected heartbeat and prior to the twentieth week of gestation during a pregnancy that has been verified by a health care provider.

**95.15(2)** A health care provider who attends or diagnoses a nonviable birth or a hospital at which a nonviable birth occurs shall advise a patient who experiences a nonviable birth that the patient may request a certificate of nonviable birth as provided in this section and, upon request by the patient, shall provide a letter certifying the nonviable birth to the patient on the form prescribed by the state registrar.

**95.15(3)** The department shall issue a certificate of nonviable birth to a patient within 60 days of receipt of a request and certification letter. The request shall be made on the form prescribed by the state registrar.

**95.15(4)** The certificate of nonviable birth shall contain all of the following:

- a.* The date of the nonviable birth.
- b.* The name and gender of the baby, if known.
  - (1) If the name is not furnished by the patient, the department shall complete the certificate with the name “baby boy” or “baby girl” and the last name of the patient.
  - (2) If the gender is unknown, the department shall complete the certificate with the name “baby” and the last name of the patient.
- c.* The name of the patient and, if married, the patient’s spouse.
- d.* The statement: “This certificate is not proof of live birth.”

**95.15(5)** The fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state and the vital records fund in accordance with Iowa Code section 144.46A.

**95.15(6)** A certificate of nonviable birth shall not be filed or registered with the department. The department shall not register the nonviable birth associated with a certificate issued under this section or use the nonviable birth in calculating live birth statistics.

**95.15(7)** A certificate of nonviable birth shall not be used to establish, bring, or support a civil cause of action seeking damages against any person for bodily injury, personal injury, or wrongful death for a nonviable birth.

**95.15(8)** This section shall only apply to, and a certificate of nonviable birth may be requested and issued for, nonviable births occurring on or after January 1, 2000.

This rule is intended to implement Iowa Code section 144.31B as enacted by 2022 Iowa Acts, Senate File 577.